

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and the reasons that follow.

I. Amendment to the specification

The Examiner objects to the amendment to the specification filed on April 21, 2009 as introducing new matter into the disclosure.

Applicants traverse. The amended structure formula (II) did not introduce new matter. The amended formula (II) might have appeared to be new due to its being drawn in reverse of the original structure formula (II). However, to advance the prosecution of the present application, Applicants currently re-draw the structure formula (II). No new matter is introduced.

Applicants respectfully request the reconsideration and withdrawal of the objection.

II. Status of the Claims

Claims 1 currently amended to recite a specific carboxylated poly(lactic acid) which is hydroxyl acetyl poly(lactic acid). Claim 19 is similarly amended. Support for the recitation can be found on page 12, line 22.

Claims 37-40 are newly added. Independent claims 37 and 40 recite a coating comprising poly(lactic acid) which has a biocompatible moiety and a bioactive agent everolimus. The recitation of the polymer and biocompatible moiety is supported by the original claims and the recitation of everolimus is supported by the examples in the specification.

No new matter is introduced by the foregoing amendments.

III. Rejections under 35 U.S.C. §112

A. §112, First paragraph

The Examiner rejects claims 1-3, 5-8, 16-21, 23-26, and 34-36 as allegedly introducing new matter which is not supported by the original specification. Specifically, the Examiner states that claims 1 and 9 recited new reaction product of a carboxylated PLA not supported by the original specification. (Office Action, page 2)

Applicants traverse. Applicants currently amend claims 1 and 19 to recite a specific carboxylated PLA produced by the reaction described on page 12 and wherein the hydroxyl acid is hydroxyl acetic acid (or glycolic acid). The recitation has adequate support in the original specification.

Applicants respectfully request the reconsideration and withdrawal of the rejection.

New claims 37 and 40 are adequately supported by the original claims and specification as discussed above. Favorable consideration of the new claims is respectfully requested.

B. §112, Second paragraph

The Examiner rejects claims 1 and 19 as allegedly being indefinite. More specifically, the Examiner states that neither R nor n is defined. (Office Action, page 3)

Applicants currently amend claims 1 and 19 to recite hydroxyl acetyl poly(lactic acid) of molecular weight of about 1,000 to about 20,000. One skilled in the art would appreciate the range of integer “n” given the repeating unit’s formula and the polymer’s molecular weight.

As such the amended claims 1 and 19 meet the definiteness requirement. Favorable consideration of the new claims is respectfully requested.

III. Rejections under 35 U.S.C. §102

The Examiner rejects claims 1-3, 5-8, 16-21, 23-26, and 34-36 as being anticipated by Yang et al (US 6,258,121) with the teaching of Kim et al (US 5,548,035) incorporated by reference. In finding the alleged anticipation, the Examiner states that Yang teaches a stent having a polymeric coating comprising PLA-PEO or PLA-PEO-PLA and treats R as being any conceivable linking group such as -CH(CH₃)-. (Office Action, pages 3 and 4)

Applicants traverse. Independent claims 1 and 19 as amended recite a specific carboxylated poly(lactic acid) which is **hydroxylacetyl** poly(lactic acid). The cited art does not teach or suggest a stent having a polymeric coating comprising hydroxylacetyl poly(lactic acid), therefore cannot anticipate these claims or render these claims obvious.

Applicants respectfully request the reconsideration and withdrawal of the rejection.

New independent claims 37 and 40 recite a coating comprising a polymer or block-

copolymer which comprises at least one biocompatible moiety and a biological agent everolimus. The cited art does not teach or suggest these limitations, therefore cannot anticipate claims 37 and 40. At least for the same reason, the cited art cannot anticipate the dependent claims 38 and 39.

Moreover, the cited art does not suggest all the claim limitations therefore cannot render these claims obvious.

Applicants respectfully request favorable consideration of these new claims.

CONCLUSION

In view of the foregoing amendments and remarks, this application is believed to be in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 07-1850. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees to Deposit Account No. 07-1850.

Respectfully submitted,

Date: August 28, 2009
SQUIRE, SANDERS & DEMPSEY LLP
One Maritime Plaza, Suite 300
San Francisco, CA 94111
Telephone: (415) 954-0313
Facsimile: (415) 393-9887

By _____

Qun Liu
Attorney for Applicants
Registration No. 55,392